Supreme Court, U.S.
FILED

No. 09-1309 FEB 17 2010

OFFICE OF THE CLERK

In The

Supreme Court of the United States

STEPHEN W. NIZIO,

Petitioner,

v.

WILLIAM M. COOK, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Pennsylvania – Middle District

PETITION FOR WRIT OF CERTIORARI

STEPHEN W. NIZIO
1049 Mo*v*ere Road
Phoenixville, Pennsylvania 19460
(484) 571-7869

QUESTIONS PRESENTED

One of the "controversies" in this case is concerned with the question, is a "Trial Court Order" valid or lawful in any way if it fails to give a Defendant in the case fair notice of his change in status, and loss of rights protected by the Constitution?

Secondly, if there was no probable cause to believe that it was necessary for the "Trial Court" to order the Chester County Court of Common Pleas Prothonotary to execute Deeds and/or evidence attached to a Petition, and the "Trial Court" being required to be neutral and detached, can the Court bypass the safeguards of a neutral predetermination of probable cause to forfeit a Defendant's papers and personal rights? Is such a proceeding for such a purpose an "unreasonable search and seizure" within the meaning of the Fourth Amendment of the Constitution? Or, is it a judicial procedure used as a shortcut method to deny the "due process of law" required by the Fourteenth Amendment?

Third, if the "Trial Court Order" involving this "controversy" ordered the Prothonotary to execute particular Deeds and/or evidence attached to a Petition as an Exhibit of evidence, can the Prothonotary fail to observe precise limits established in advance by a specific Court Order? Can he go beyond that limited Exhibit of evidence and execute some other evidence that did not exist, and was fabricated by an

QUESTIONS PRESENTED – Continued

Attorney who has no authority to consent to seizure of another person's papers, personal rights, or property rights? Was this action a planned warrantless seizure? If so, would it be inconsistent with the existing body of Fourth Amendment law? Does it violate "due process of law" required by the Fourteenth Amendment?

Fourth, by a Notary Public in this case taking false acknowledgments and/or falsifying acknowledgments on Deeds and/or evidence while the official was purporting or pretending to act in the performance of his official duties deny the Petitioner the "due process of law" required by the Fourteenth Amendment? Does the Notaries Public actions besides the obvious fraud constitute an infraction and/or deprivation of any rights, privileges, or immunities secured to the Petitioner by the United States Constitution, because the acknowledgments are not the product of an essentially free and unconstrained choice by the Petitioner?

Fifth, if the explicit language of the "Trial Court Order" and it being attached as numbered pages contained within false evidence, and also fabricated evidence, becomes void for fraud as it is put forward as being something which it is not – does the Constitution permit the Judge to allow such iniquities to succeed? Can the "Trial Court" be allowed to obtain or maintain Petitioner's real property by fraud or trick, and without lawful justification, and without

QUESTIONS PRESENTED – Continued

compensating the Petitioner, and without consideration? Would this be a plain denial of equal protection of the laws, and is it in accordance with the guarantees of all the provisions of the Bill of Rights made applicable to the States by the Fourteenth Amendment? Are those two (2) Deeds the fruits of a Constitutional violation?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Thomas R. Wilson, Esquire
Bryan D. Walters, Prothonotary
Ryan Costello, The Chester County Recorder of Deeds
Andrew Harden, Notary Public

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the Judgment below.

OPINIONS BELOW

The opinion of the highest State Court to review the merits appears at *Appendix* 2, 3 to the Petition, and are one sentence Orders without any comments.

The opinion of the Superior Court appears at *Appendix* 4, 5 to the Petition, and are one sentence Orders without any comments.

JURISDICTION

The date on which the highest State Court decided my case was September 17, 2009. A copy of that Order appears at *Appendix* 1.

A timely Petition and/or Application for re-argument or reconsideration were thereafter denied on the following date: November 19, 2009, and a copy of the Order denying reconsideration appears at *Appendix* 6.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III.

Section 1.

The judicial Power of the United States shall be vested in *one supreme Court*, **and in** *such inferior Courts as the Congress may from time to time ordain and establish.* **The Judges, both of the supreme and inferior Courts, shall hold their Offices during** *good Behaviour*, **and shall, at stated Times, receive for their Services a** *Compensation, which shall not be diminished during their Continuance in Office.*

Section 2.

The Judicial Power shall extend to all Cases, in *Law and Equity, arising under* **this Constitution, the Laws of the United States, and** *Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Counsuls; to all Cases of admiralty and maritime Jurisdiction; – to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; – between Citizens of different States;*

– between Citizens of the same State claiming Lands under Grants of different States, and between a State,

or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have *original Jurisdiction*. **In all the other Cases before mentioned, the supreme Court shall have** *appellate Jurisdiction*, **both** as to Law and Fact, *with such Exceptions, and under such Regulations as the Congress shall make.*

Article VI.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof and all Treaties made, or which shall be made, under the Authority of the United States, shall be the *supreme Law of the Land*; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable searches and seizures*, shall not be violated, and no *Warrants shall issue*, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be

searched, and the persons or things to be seized.

Amendment XIV.

Passed by Congress June 13, 1866, Ratified July 9, 1868.

Note: Article I, section 2, of the Constitution was modified by section 2 of the 14th amendment.

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the *privileges or immunities* of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without *due process* of law; nor deny to any person within its jurisdiction the *equal protection* of the laws.

The Notary Public Law of 1953, 57 P.S. Sections 147-168.3; The Uniform Acknowledgement Act of July 24, 1941 (P.L. 490, No. 188), and 21 P.S. Sections 291.1-291.13.

STATEMENT OF THE CASE

This controversy arises out of the mischief and fundamentally wrong acts done by officials while they

were purporting or pretending to act in the performance of their official duties. As a result, the Petitioner in this case involving CIVIL ACTION – LAW & EQUITY, has been subjected to the deprivation of his rights, privileges, or immunities secured by the Constitution and laws of the United States.

On May 21, 2008, Respondent's Attorney sent the Petitioner a letter with two (2) Deeds enclosed with it for Petitioner to execute. Shortly thereafter, during a May 28, 2008 Hearing, Respondent's Attorney presented the same two (2) Deeds to the Court for the purpose of requesting that the Court have the Petitioner execute them. At the time of the Hearing, Petitioner brought to the Court's attention that Petitioner was involved in an appeal, in which the Court already had knowledge of. After that failed attempt, the Attorney for the Respondent filed a Petition to Enforce Order for Transfer of Real Estate on July 21, 2008, and attached those same two (2) Deeds and/or evidence, and his letter dated May 21, 2008 as Exhibit C to his Petition. A copy of the two (2) Deeds and/or evidence attached as Exhibit C to William M. Cook's Petition to Enforce Order for Transfer of Real Estate that he filed on July 21, 2008, and the letter from William M. Cook's Attorney, Thomas R. Wilson, Esquire dated May 21, 2008 directed to "Nizio." Also, the "Proposed Order" that was attached as Exhibit E to the Respondent's Petition to Enforce Order for Transfer of Real Estate.

The "Trial Court" set a Hearing for August 26, 2008 for argument in the matter. The Court's Order dated July 22, 2008 was filed on July 23, 2008. On August 11, 2008, Petitioner filed an Answer and New Matter to the Petition to Enforce Order for Transfer of Real Estate. In Petitioner's Answer and New Matter, the Petitioner explained to the "Trial Court" about the Fourteenth Amendment of the Constitution that secures the right to due process before a citizen can be deprived of life, liberty, or property. Petitioner also let the "Trial Court" know that Stephen W. Nizio is a living person on the land, and is here as himself. Petitioner preserved that with the "Trial Court" to make it understood that there is no reason for anyone to perform an act instead of the Petitioner. The Court should clearly understand that, because under the Rules of Civil Procedure, Pa. R.C.P. 1529, Enforcement of Orders Execution Process Rule 1529, concerned with several aspects of execution process has been rescinded. Subdivision (a) of the rule made execution process available in actions at law available also to actions in equity. With the consolidation of the forms of action, this provision is no longer necessary. Subdivision (b) authorized the Court to order the Prothonotary or Sheriff to perform an act which the party fails to perform. The power of contempt rendered this provision unnecessary, Pa. R.C.P. 1529, Rescinded Dec. 16, 2003, effective July 1, 2004.

The August 26, 2008 Hearing was cancelled the day before the Hearing. Petitioner was told by a

representative from the Judge's Chambers that she would call him when a new date was scheduled for a Hearing, and then failed to do so. Petitioner also continued with his appeal process with the Supreme Court of Pennsylvania Middle District as well, raising the issues about the case, and the relevant affirmative defenses, including the Statute of Frauds, the Statute of Limitations, and others that have been raised in the defense of the case, and that there was shaving of evidence. Clearly, a Court shouldn't be doing that. Such actions destroy "essential fairness."

Respondent's Attorney and others including Public Officials, obviously frustrated by the Petitioner exercising or in the enjoyment of his Civil Rights, decided to engage in official lawlessness. They allege that there was a Hearing on November 10, 2008. If there was a Hearing, it was extremely mischievous to exclude the Defendant in the case. Also, according to Real Estate principles a Correction Deed, also called a Deed of Confirmation is used to correct an error in a previously executed and delivered Deed; and for example, a name may have been misspelled, or an error found in the property description. It's hypocrisy for the "Trial Court" and other officials to claim they are correcting something by them being the ones involved in a fraudulent act. The Trial Court's Order dated November 10, 2008 and entered on November 12, 2008 that is attached to evidence and/or Deeds as numbered pages within them appear to have been recorded on the Public Record with the Chester County, Pennsylvania Recorder of Deeds on

November 13, 2008. The petitioner was forced to go to the Chester County Recorder of Deeds Office to find these Deeds, which are *false evidence*, and also *fabricated evidence*. The Deeds that were recorded on public Record contain false information.

PA Rules of Professional Conduct Rule 3.4, Fairness to Opposing Party and Counsel. A Lawyer shall not: (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value, or assist another person to do any such act; (b) falsify evidence. With regard to Rule 3.4(b), DR 7-102(A)(6) provides that a Lawyer shall not "participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false." The Deeds were created by Respondent's Attorney.

These types of actions are not consistent with concepts of fairness in judicial procedure. The Chester County Court of Common Pleas Prothonotary Office subjected the Petitioner to further mistreatment by impeding and depriving Petitioner of the "Trial Court Order." They waited until November 19, 2008 before they deposited the Order into the U.S. Mail. Petitioner has the envelope with "US POSTAGE 11/19/2008" and the November 10, 2008 "Trial Court Order." Our State and National Constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair and

impartial tribunals in which every Defendant stands equal before the law.

In this case, the "Trial Court" cannot show "exigent circumstances" to order the Prothonotary to sign Deeds and/or evidence; and this is not a case involving contraband or stolen goods, or objects dangerous in themselves. The opportunity for seizure was thus hardly "fleeting." The property is a small farm which could not be picked up and moved out of the locality, or jurisdiction. And, on top of all that the Prothonotary did not execute the Deeds and/or evidence he was ordered to execute. He went beyond permissible limits, and the "Trial Court" knows it was not necessary; therefore, it was unreasonable from the start. The Trial Court's Order was appealed on December 10, 2008.

REASONS FOR GRANTING THE PETITION

Petitioner's reasons for granting certiorari are essentially rooted in the fact that he has been deprived of his rights, privileges, or immunities secured or protected to him by the Constitution and laws of the United States. The Trial Court in this case and controversy has so far departed from the accepted and usual course of judicial proceedings, that an abuse of discretion has been manifested and will serve to encourage disobedience of the Federal Constitution which it is bound to uphold. Olmstead v. United States, 277 U.S. 438; 48 S. Ct. 564; 72 L. Ed.

944 (1928). Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent, teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

To apply the principle that an acknowledgment is similar to a confession for this controversy. Schneckloth v. Bustamonte, 412 U.S. 218; 93 S. Ct. 2041; 36 L. Ed. 2d 854 (1973). Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confessions offends due process.

The Notary Public in this controversy involved himself in a willful misrepresentation, and as a result caused harm to willfully deprive the petitioner of his rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S. The Petitioner did not personally appear. The Petitioner does not know that Notary Public, nor did he satisfactorily prove to be the person whose name is subscribed to the within instruments, and clearly the Petitioner did not in any way acknowledge that he executed the

same for the purposes therein contained. Therefore, the Notary Public is a false witness, and abused or misused his power.

21 P.S. Section 291.5, Requisites of acknowledgment – The officer taking the acknowledgment shall know or have satisfactory evidence that the person making the acknowledgment is the person described in and who executed the instrument. 1941, July 24, P.L. 490, Section 5.

57 P.S. Section 158.1, Determining Identity of Person Appearing – (a) The officer notarizing the instrument shall know through personal knowledge or have satisfactory evidence that the person appearing before the notary is the person described in and who is executing the instrument. For the purposes of this act and section 5 of the act of July 24, 1941 (P.L. 490, No. 188), known as the "Uniform Acknowledgment Act," "personal knowledge" means having an acquaintance, derived from association with the individual in relation to other people and based upon a chain of circumstances surrounding the individual, which establishes the individual's identity and "satisfactory evidence" means the reliance on the presentation of a current, government-issued identification card bearing a photograph, signature or description and serial or identification number, or the oath or affirmation of a credible witness who is personally known to the notary and who personally knows the individual.

(b) In certifying a copy of a document or other item, a notary public shall determine that the proffered copy is a full, true and accurate transcription or reproduction of that which was copied.

1953, Aug. 21, P.L. 1323, Section 12.1, added 2002, Dec. 9, P.L. 1269, No. 151, Section 7, effective July 1, 2003.

What is a Notary Public?

As public officials who are appointed and commissioned by the Secretary of the Commonwealth, notaries public are held to the highest standards of integrity, honesty and trust. Notaries public are also playing an ever more vital role in commerce and are on the front lines of deterring document fraud, particularly in light of heightened security concerns and the increased threat of identity theft. In Pennsylvania, a notary public has the power to administer oaths and affirmations, certify copies and take depositions, affidavits, verifications, upon oath or affirmation and acknowledgments. In addition, notaries public are authorized to issue protests. Notaries public commissioned in Pennsylvania are authorized to notarize documents in any county in Pennsylvania.

According to the Federal Government, identity theft is the fastest growing crime in America. The directional sweep of the way the law is moving should

be going in a direction of preventing identity theft, and not to encourage it.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

STEPHEN W. NIZIO
Petitioner
1049 Mowere Road
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(484) 571-7869

Date Originally Filed: February 17, 2010

Date Resubmitted per Court Request: April 26, 2010

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

WILLIAM M. COOK,	:	No. 144 MM 2009
Respondent	:	
	:	
v.	:	
STEPHEN W. NIZIO,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 17th day of September, 2009, the Application for Extraordinary Relief Pursuant to Pa.R.A.P 3309 is **DENIED**.

TRUE & CORRECT COPY

ATTEST: September 17, 2009

/s/ Elaine Hellen
Elaine Hellen, Assistant Chief Clerk

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

WILLIAM M. COOK,	:	No. 41 MM 2009
Respondent	:	
	:	
v.	:	
STEPHEN W. NIZIO,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 16th day of July, 2009, the Application for Reconsideration is **DENIED**.

TRUE AND CORRECT COPY

Attest: July 16, 2009

/s/ Elizabeth Zisk
Elizabeth E. Zisk, Chief Clerk

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

WILLIAM M. COOK,	:	No. 41 MM 2009
Respondent	:	
	:	
v.	:	
STEPHEN W. NIZIO,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 27th day of May, 2009, the Petition for Allowance of Appeal, treated as a Petition for Review, is **DENIED**.

TRUE AND CORRECT COPY

Attest: May 27, 2009

/s/ Elaine Hellen
Elaine Hellen, Assistant Chief Clerk

WILLIAM M. COOK	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
STEPHEN W. NIZIO	:	No. 3483 EDA 2008 (C.P. CHESTER COUNTY 04-06486)

ORDER

The Court hereby **GRANTS** the motion to dismiss.

PER CURIAM

Date: JAN 29 2009

William M. Cook	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
V.	:	(C.P. Chester County No. 04-06486)
Stephen W. Nizio	:	No. 3483 EDA 2008
	:	Filed: February 24, 2009

ORDER

Appellant's application for reconsideration of this Court's order of January 24, 2009, is **DENIED**.

Per Curiam

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

WILLIAM M. COOK,	:	No. 144 MM 2009
Respondent	:	
	:	
v.	:	
STEPHEN W. NIZIO,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 19th day of November, 2009, the Application for Reconsideration is **DENIED**.

TRUE & CORRECT COPY

ATTEST: NOV 19 2009

/s/ Elizabeth Zisk
ELIZABETH E. ZISK
CHIEF CLERK

No. 09-1309

JUL 23 2010
OFFICE

In The

Supreme Court of the United States

STEPHEN W. NIZIO,

Petitioner,

v.

WILLIAM M. COOK, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Pennsylvania – Middle District

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner respectfully moves this Court for an order (1) vacating its order of June 28, 2010, which denied the petition for writ of certiorari filed by petitioner on February 17, 2010, and resubmitted per Court request April 26, 2010, and (2) granting the petition for writ of certiorari. The grounds of rehearing are stated below.

REASONS FOR GRANTING REHEARING

I. Intervening Circumstances of a Substantial or Controlling Effect or to Other Substantial Grounds Not Previously Presented.

U.S. law enforcement officers and other officials like judges, prosecutors, and security guards have been given tremendous power by local, state, and federal government agencies – authority they must have to enforce the law and ensure justice in our country. These powers include the authority to detain and arrest suspects, to search and seize property, to bring criminal charges, to make rulings in court, and to use deadly force in certain situations.

Preventing abuse of this authority, however, is equally necessary to the health of our nation's democracy. That is why it's a federal crime for anyone acting under "color of law" willfully to deprive or conspire to deprive a person of a right protected by the Constitution or U.S. law. "Color of law" simply means that the person is using authority given to him or her

by a local, state, or federal government agency. In the instant case some county and/or state action through its officials or agents has been taken, adverse to the rights of a citizen of the United States sought to be protected by the Fourteenth Amendment, which the Amendment was intended to provide against; and that is, state laws, or state action of some kind, adverse to the rights of the citizen secured by the Amendment.[1] There are substantial grounds for Granting Rehearing in this case. The Petitioner has been deprived of his Constitutional or Statutory rights by officials acting "under color of *state law.*" In effect, they were willful participants in official lawlessness. All power may be abused if placed in unworthy hands.

II. Under Color of State Law

Covers not only acts done by an official under a State law, but also acts done by an official under any ordinance of a county or municipality of the State, as well as acts done under any regulation issued by any State or County or Municipal official, and even acts done by an official under color of some State or local custom.

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[1] The Fourteenth Amendment nullifies and makes void all state legislation, and state action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws.

To act "under color of *state law*" means to act beyond the bounds of lawful authority, but in such a manner that the unlawful acts were done while the official was purporting or pretending to act in the performance of his official duties. In other words, the unlawful acts must consist of an abuse or misuse of power which is possessed by the official only because he is an official.

A person may be found guilty even though he was not an official or employee of the State, or of any county, city, or other governmental unit if the essential elements of the offense charged have been established and the person was a willful participant with the state or its agents in the doing of such acts.

"Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of state law.'" *United States v. Classic*, 313 U.S. 299, 326 (1941).

> Every person who, under *color* of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in *equity*, or other proper proceeding for redress . . .

42 U.S.C. § 1983 (1988).

Title 18, U.S.C., Section 241 Conspiracy Against Rights

This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States (or because of his/her having exercised the same).

It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured.

Punishment varies from a fine or imprisonment of up to ten years, or both; and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years, or for life, or may be sentenced to death.

Title 18, U.S.C., Section 242 Deprivation of Rights Under Color of Law

This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.

This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause tc be subjected any person to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such person being an alien or by reason of his/her color or race.

Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. This definition includes, in addition to law enforcement officials, individuals such as Mayors, Council persons, Judges, Nursing Home Proprietors, Security Guards, etc., persons who are bound by laws, statutes, ordinances, or customs.

Punishment varies from a fine or imprisonment of up to one year, or both, and if bodily injury results or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined or imprisoned up to ten years or both, and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

The Fourth Amendment of the U.S. Constitution guarantees the right against unreasonable searches or seizures. A law enforcement official using authority provided under the color of law is allowed to stop individuals and, under certain circumstances, to search them and retain their property. It is in the abuse of that discretionary power – such as an unlawful detention or illegal confiscation of property – that violation of a person's civil rights may occur.

Fabricating evidence against an individual also violates the color of law statute, taking away the person's rights of due process and unreasonable seizure. In the case of deprivation of property (including the instant case), the color of law statute would be violated by unlawfully obtaining or maintaining a person's property, which oversteps or misapplies the official's authority. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury."

While it is well settled that the Bill of Rights and the Fourteenth Amendment are not "directed against the action of individuals," it must not be assumed that the citizen enjoys no federal protection against the invasion of his civil rights. It was not until the Civil Rights Section in the Department of Justice, created in 1939, decided to appeal the *Classic* case (1941) that the Supreme Court got its first opportunity to interpret Section 242. There it held the statute applicable to Classic, a state election official, on the ground that "misuse of power, possessed by

virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of state law.'"

Two counts of an indictment found in a federal district court charged that appellees [Classic and others], Commissioners of Elections, conducting a primary election under Louisiana law, to nominate a candidate of the Democratic Party for representative in Congress, willfully altered and falsely counted and certified the ballots of voters cast in the primary election . . . and also that the willful action of appellees as state officials, in falsely counting the ballots at the primary election and in falsely certifying the count, deprived qualified voters of that right and or the equal protection of the laws guaranteed by the Fourteenth Amendment, all in violation of Section 20 of the Criminal Code, and is presently called Section 242 of Title 18 of the U.S. Code . . . If a right secured by the Constitution may be infringed by the corrupt failure to include the vote at a primary in the official count, it is not significant that the primary, like the voting machine, was unknown when Section 19 was adopted, and is presently called Section 241 of Title 18 of the U.S. Code. Abuse of either may infringe the right and therefore violate Section 19. . . .

The right of the voters at the primary to have their votes counted is, as we have stated, a right or privilege secured by the Constitution, and to this Section 20 also gives protection. The alleged acts of appellees were committed in the course of their performance of duties under the Louisiana statute

requiring them to count the ballots, to record the result of the count, and to certify the result of the election. Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken "under color of" state law. . . . Here the acts of appellees infringed the Constitutional right and deprived the voters of the benefit of it within the meaning of Section 20. . . .

Reversed

In the instant case, Andrew Harden Notary Public and/or Respondent misused his power possessed by virtue of state law. Also, Petitioner was told by an investigator from the Commonwealth of Pennsylvania Department of State Bureau of Enforcement and Investigation that Respondent works at the Court House in question. The Respondent (Harden) falsely taking and/or falsifying acknowledgments on (2) two separate documents in which the fraud manifested by the official is that: [On this, the 12 day of Nov. 2008, before me, a notary public, the undersigned officer, personally appeared Stephen W. Nizio known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.]

Besides the fraud and misuse of power by Respondent (Harden), another Respondent in this

case Bryan D. Walters, Prothonotary did not have legal or lawful authority to execute the fraudulent deeds Petitioner found at the Chester County Recorder of Deeds office. It is pertinent to know the difference between lawful and legal any time one is discussing matters of law.[2] Some legislative or administrative procedure may be legal but not lawful, while a legislative or administrative procedure that is lawful is, at the same time, legal. The distinction being that a legal procedure is one simply done in accordance with some legislative act but without regard to morals, while the lawful procedure accords with both legal and moral factors. Fraud by officials in the performance of their official duties cannot be made lawful. Also, no one witnessed Respondent (Walters) sign anything either. Could it be that the Respondent (Walters) did not execute anything? Perhaps this is why Respondent (Walters) would not return calls to an investigator with the Pennsylvania Department of State who has tried numerous times to contact the Respondent (Walters).

Currently, the Respondent (Cook) and others are trying to sell these fraudulent deeds. This will

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[2] The function of guarding the public against acts deemed illegal rest with the public officials. The misuse of power possessed by virtue of state law by an official and/or officials is in violation of specific constitutional protections against such abuses of power. Such an injury is appropriate for judicial redress, and the Petitioner has established the necessary nexus between his status and the nature of the unconstitutional action to support his claim of standing to secure judicial review.

manifest a new fraud, and surely create more injury and oppression to the Petitioner. Also, the same Realtor that has been involved with issues involving this property and/or properties since 2002 is the one helping them solicit the fraudulent documents in West Vincent Township, Chester County, Pennsylvania. The Realtor is supposed to protect the public from fraud, dishonesty, and deceit. He should not be part of such actions and deceptive business practices.

It is critical that this Court grant certiorari and make a ruling, or at least require the courts below to do so.[3]

CONCLUSION

For the foregoing reasons, and for the reasons stated in the petition for writ of certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition for writ of certiorari, and review the judgment below.

Respectfully submitted,

Stephen W. Nizio
Petitioner
Date: July 23, 2010

[3] There was no response from the opposing counsel or any of the Respondents to the petition for writ of certiorari. The record shows no waiver by the counsel.

CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

STEPHEN W. NIZIO